

Dec 18, 2017

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM ,

Plaintiff,

v.

DEA AGENT JOHN DOE #1 and
DEA AGENT JOHN DOE #2,

Defendants.

NO: 4:17-CV-05045-SMJ

**ORDER DISMISSING ACTION
AND DENYING PENDING
MOTION**

BEFORE THE COURT is Plaintiff's Second Amended Complaint, ECF No.

24. This is a civil rights action proceeding under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and *in forma pauperis*.

The only Defendants named in this action are DEA Agent John Doe #1 and DEA Agent John Doe #2. Plaintiff states these John Doe agents work in the Federal Building in Spokane, Washington. The Court notes, however, that the

1 Drug Enforcement Agency is not located in the Thomas S. Foley U.S. Courthouse
2 in Spokane, Washington.

3 Plaintiff claims these John Doe Defendants conducted a criminal
4 investigation in cause number 2:16-CR-080-RMP-3, and knowingly presented
5 false information to have Plaintiff indicted, illegally arrested and falsely
6 imprisoned. ECF No. 24 at 5. Although granted the opportunity to do so, Plaintiff
7 has failed to identify the John Doe Defendants with sufficient specificity to allow
8 the Court to effectuate service. It is not possible for the United States Marshals to
9 serve an anonymous defendant.

10 Because the Court is unable to direct service on John Doe Defendants, the
11 Court will have no personal jurisdiction over them. *See Omni Capital Intern. Ltd.*
12 *v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Therefore, Plaintiff's claims
13 against DEA Agent John Doe #1 and DEA Agent John Doe #2 are subject to
14 dismissal pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

15 Furthermore, even if Plaintiff had named the Drug Enforcement Agency as a
16 defendant to this action, an agency of the United States is not subject to suit under
17 *Bivens*. *See FDIC v. Meyer*, 510 U.S. 471, 486 (1994).

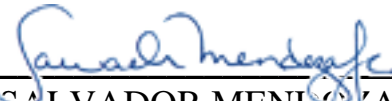
18 Having failed to identify a Defendant to this action who can be sued and
19 served, **IT IS ORDERED:**

1 1. Plaintiff's Second Amended Complaint is **DISMISSED without**
2 **prejudice** for lack of personal jurisdiction.

3 2. All pending motions are denied as moot.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
5 enter judgment, forward a copy to Plaintiff and close the file. The Court certifies
6 any appeal of this dismissal would not be taken in good faith.

7 **DATED** this 18th day of December 2017.

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10 SALVADOR MENDOZA, JR.
11 United States District Judge
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